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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,816	12/28/2000	Tatsurou Kawamura	43888-092	3440

7590                    07/31/2003

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[REDACTED] EXAMINER

COLE, MONIQUE T

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1743

8

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/749,816	KAWAMURA, TATSUROU	
	<b>Examiner</b> Monique T. Cole	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 May 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 and 14-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 8-12 and 14-28 is/are allowed.

6) Claim(s) 1 and 5-7 is/are rejected.

7) Claim(s) 2-4 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>1</u>	6) <input type="checkbox"/> Other: _____

### DETAILED ACTION

The prior objection of claim 10 is withdrawn in light of Applicant's remarks.

The prior rejection of claims 1-7 and 13as being indefinite under 35 USC 112, 2<sup>nd</sup> paragraph has been withdrawn in light of Applicant's remarks.

The prior rejection of claims 12, 14, 15 and 17 under 35 USC 103 as being unpatentable over Corey has been withdrawn in light of Applicant's amendment of claim 12.

The prior rejection of claim 8 under 35 USC 103 as being unpatentable over Kawamura in view of Corey is withdrawn in light of Applicant's remarks.

#### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 5, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 5,264,589 to Corey (herein referred to as "Corey '589").

Corey '589 teaches that a known method for the determination of the presence of protein consists of measuring turbidity following sample acidification. According to this known method, the turbidity of the sample is measured using a spectrophotometer following the addition of a protein-precipitating agent, generally an acidifying agent, to the sample. The calculated turbidity of the sample is compared to the spectrophotometric standard curves to determine the presence of protein in the sample. Common precipitating agents include sulfosalicylic acid, trichloroacetic acid and tannic acid. See col. 1, lines 45-55.

While Corey '589 does not explicitly teach measuring intensity before and after the addition of tannic acid, it would have been obvious to one of ordinary skill in the art to measure the absorbancy before and after the addition of tannic acid in order to generate the spectrophotometric standard curve used to calibrate protein amount. Measuring the sample before the addition of tannic acid would serve as a reference sample and eradicate any unwanted background from the sample. It is well appreciated in the art that a "zeroing" sample be used to calibrate the spectrophotometer prior to subsequent measure of samples. Further, with regard to claim 7, while Corey '589 does not disclose such a correction procedure, it would have been well within the skill of the art to recognize procedural problems that may lead to a skewed result and have some means to compare the result to that indicative of a problem.

*Response to Arguments*

2. Applicant's arguments filed 5/15/2003 have been fully considered but they are not persuasive. Applicant has argued that the Examiner's rationale for applying Corey is flawed. However, it is still the Examiner's position that given conventional laboratory techniques, absorbance is measured in samples before the addition of reagents in order to generate a baseline for the measurements. Thus, it would have been obvious to one having ordinary skill in the art to measure the protein sample before the addition of tannic acid.

*Allowable Subject Matter*

3. Claims 8-12 and 14-28 are allowed.

Art Unit: 1743

4. Claims 2, 3 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 703-305-0447. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0661.

*M. Cole*  
Monique T. Cole  
Examiner  
Art Unit 1743

MC MC  
July 28, 2003